

## EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Exclusive Negotiating Rights Agreement (the "Agreement") is entered into as of April 27, 2004, by and between the Sunnyvale Redevelopment Agency, a public body, corporate and politic (the "Agency"), and Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company (the "Developer"), with reference to the following facts:

- A. The Agency is responsible for implementation of the Redevelopment Plan for the Central Core Redevelopment Project Area (the "Redevelopment Plan"). The Redevelopment Plan affects and controls development and use of all real property located within an area within the City of Sunnyvale, California, more particularly described and set forth in the Redevelopment Plan (the "Project Area").
- B. By resolution the Agency designated an area generally bounded by Mathilda, Washington, Iowa and Sunnyvale and shown on the map attached hereto as Exhibit A (the "Site") as a master developer site, and, in accordance with the Agency's Rules for Owner Participation and Business Preference, the Agency distributed a Request For Proposals (an "RFP") to the property owners within the Site. An affiliate of Developer owns a portion of the Site and has contracted to purchase other portions of the Site.
- C. The Agency has determined that the development of the Site will be accomplished most effectively and economically if undertaken by a single master developer under an agreement between the Agency and the Developer providing for their respective rights and obligations in connection with development of the Site
- E. The Agency has selected the Developer as the entity with which to negotiate terms for an agreement for development of the Site.
- F. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Agency and the Developer (the "Parties") of an agreement for development of the Site. As more fully set forth in Section 3.1, this Agreement in itself does not grant the Developer the right to develop the Site.

With reference to the facts recited above, the Parties agree as follows:

ARTICLE 1  
EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1     Good Faith Negotiations. During the Negotiating Period described in Section 1.2, the Agency and the Developer shall diligently and in good faith negotiate the terms of an owner participation and disposition and development agreement for the development of the Site (the "OPDDA"). During the Negotiating Period, the Parties shall use good faith efforts to negotiate a mutually satisfactory OPDDA.

Section 1.2     Negotiating Period. The negotiating period under this Agreement shall be sixty (60) days from the date of this Agreement (the "Negotiating Period"), subject to extension or early termination as provided below. If, in the judgment of the Executive Director, negotiations with the Developer have progressed sufficiently to indicate that the Parties can satisfactorily reach agreement and present that agreement to the Agency Board within an additional thirty (30) days, then the Executive Director, on behalf of the Agency, may extend the Negotiating Period for up to an additional thirty (30) days with the consent of the Developer. If the Developer has not met the milestones set forth in Section 1.3 by the date set therein or such later date as the Agency Executive Director may approve, the Agency may declare a default and terminate this Agreement prior to the end of the Negotiating Period in accordance with Section 3.4 below.

Section 1.3     Milestones. During the Negotiating Period, the Developer shall do the following:

(a)     By May 3, 2004 enter into an agreement with Standard Pacific (or an affiliate of Standard Pacific) (the "Housing Developer") providing for the Housing Developer to purchase the portion of the site to be developed with housing, for the Housing Developer to develop the housing portion of the Site, and for the Housing Developer to undertake the obligations under OPDDA (assuming the parties reach agreement thereon) with respect to development of the housing portion of the Site.

(b)     By June 14, 2004, submit to the Agency a complete list of the Developer's design team for development of the Site including architects, landscape architects, engineers and other design and engineering professionals.

(c)     By July 12, 2004, submit to the Agency a revised construction schedule for demolition of existing improvements on the site and construction of new buildings and other improvements on the Site.

(d)     Promptly after execution thereof, submit to the Agency any amendments to the operating agreement for the Developer, and amendments to agreements or agreements between the Developer or Forum Development Group, the managing member of Developer and Lehman ALI, Inc., or the affiliates of any of those entities.

Section 1.4 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the Agency shall not negotiate with any person or entity, other than the Developer, regarding development of the Site or any portion thereof, or solicit or entertain bids or proposals to do so. This prohibition shall not preclude Agency discussions with owners of parcels making up the Site for the purpose of exploring acquisition of the Site and related matters.

Section 1.5 Deposit for Agency Costs. In consideration for this Agreement and the costs the Agency has and will incur in furtherance of this Agreement and the negotiation of the OPDDA, the Developer has, prior to execution of this Agreement by the Agency, provided to the Agency a cash deposit of Fifty Thousand Dollars (\$50,000) (the "Deposit"). During the term of this Agreement, the Agency shall invest the Deposit for purposes of earning interest thereon.

During the Negotiating Period, the Agency may draw on the Deposit and interest earnings thereon to pay for the Agency's cost for third party assistance in the negotiations for the OPDDA. When making any draw from the Deposit, the Agency shall notify Developer in writing of the purpose and amount of the draw.

Any amount remaining in the Deposit and interest thereon after the Agency draws pursuant to the previous paragraph shall be disposed of as follows:

(a) If this Agreement is terminated without execution of an OPDDA for any reason other than the Developer's breach of its obligation to negotiate in good faith, then the remaining Deposit and any interest earned thereon shall be refunded promptly to the Developer.

(b) If this Agreement is terminated by the Agency at any time due to a breach of the Developer's obligation to negotiate in good faith, then the remaining Deposit and any interest earned thereon shall be retained by the Agency, as more fully provided in Section 3.4.

(c) If performance of this Agreement results in execution of an OPDDA, the disposition of the remaining Deposit and any interest earned thereon shall be as set forth in the OPDDA.

## ARTICLE 2 NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the OPDDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable OPDDA prior to the expiration of the Negotiating Period.

Section 2.2 Reports. The Developer shall provide the Agency with copies of all final reports, studies, analyses, correspondence, and similar documents, prepared or commissioned by the Developer with respect to this Agreement and the development of the Site, promptly upon their completion. The Agency shall provide the Developer with copies of all reports, studies, analyses, correspondence, and similar documents prepared or commissioned by the Agency with respect to this Agreement and the Development, promptly upon their completion. Nothing in this Section 2.2 obligates the Agency to undertake any studies or analyses.

Section 2.3 Planning Approval. The Developer acknowledges that the development of the Site requires approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period, the Developer may submit a formal application for the Planning Approvals. Developer understands that applying for and obtaining the Planning Approvals will be a pre-disposition condition under the OPDDA, to the extent that Planning Approvals are not obtained during the Negotiating Period.

Section 2.4 Environmental Review. The Developer shall prepare and submit to the Agency such plans, specifications, drawings, and other information, as specified by the Agency, to the extent the information is needed to determine the level and nature of environmental review required by CEQA for the development of the Site.

Section 2.5 Financial Proforma Analysis. The Developer shall provide the Agency with a detailed financial proforma for the development of the Site containing matters typically contained in such proformas, including (without limitation) a detailed development cost budget and a detailed operating income and expense estimate (excluding confidential or proprietary information). The financial proforma will be used to evidence the financial feasibility of the development and to assist in the negotiation of terms regarding payment of costs of development.

Section 2.6 Property Acquisition. The Developer has entered into agreements to purchase some of the parcels in the Site and is in the process of negotiating agreements for acquisition the remaining parcels in the Site not currently owned by Developer or its affiliates. Developer shall provide the Agency with periodic reports regarding its acquisition activities, shall notify the Agency promptly upon acquisition of any parcel in the Site by Developer or an affiliate, and shall provide the Agency with a copy of any contract Developer or an affiliate enters into for acquisition of any part of the Site promptly after entering into that agreement.

Section 2.7 Progress Reports. Upon reasonable notice, as from time to time requested by the Agency, the Developer shall make progress reports advising the Agency on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Development. Such progress reports shall be in writing, if so requested by the Agency. The Agency shall not request written reports more frequently than once each month.

## ARTICLE 3 GENERAL PROVISIONS

Section 3.1     Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either Party to enter into an agreement for development of the Site or an agreement for development of the Site on any particular terms. By execution of this Agreement (and approval of any extension of the Negotiating Period), the Agency is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the Agency is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Agency and City action the final discretion and approval regarding the execution of an agreement for development of the Site and all proceedings and decisions in connection therewith. Any agreement for development of the Site resulting from negotiations pursuant to this Agreement shall become effective only if and after such agreement has been considered and approved by the Agency and (if required by law) the City following conduct of all legally required procedures.

Section 3.2     Costs and Expenses. Except as set forth in Section 1.5 above, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 3.3     No Commissions. The Agency shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any OPDDA that may result from this Agreement. The Agency represents that it has engaged no broker, agent, or finder in connection with this transaction. The Developer shall defend and hold the Agency harmless from any claims by any broker, agent, or finder retained by the Developer.

Section 3.4     Default and Remedies.

(a)     Default. Failure by either Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b)     Remedies. In the event of an uncured default by the Agency, the Developer's sole remedy shall be to terminate this Agreement, upon which the Developer shall be entitled to the return of the remaining Deposit that the Agency has not previously drawn pursuant to Section 1.5 above and any interest earned thereon. Following such termination and the return of the remaining Deposit and any interest earned thereon, neither Party shall have any further right, remedy or obligation under this Agreement,

except that the Developer's indemnification obligation pursuant to Sections 3.3 shall survive such termination.

In the event of an uncured default by the Developer, the Agency's sole remedy shall be to terminate this Agreement and to retain the Deposit and any interest earned thereon. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement, except that the Developer's indemnification obligation pursuant to Section 3.3 shall survive such termination.

Except as expressly provided above, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.5 Assignment. This Agreement may not be assigned without the prior written approval of the Agency, which may withhold approval in its sole discretion. In addition, any material change in the ownership arrangement described in Section 3.6 shall be a Developer default under this Agreement.

Section 3.6 Developer Identity. The Developer represents that the Developer is a Georgia limited liability company, which is wholly owned by Forum Development Group, a Georgia limited liability company and that all of the ownership interests in Developer have been assigned as security to Lehman, ALI, Inc., ("Lehman"). For the purpose of this Agreement, Lehman or a affiliate of Lehman shall be considered an affiliate of Developer.

Section 3.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.8 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the future development of the Site. The Parties acknowledge that there are existing agreements regarding the Site to which the Agency is a party and to which Developer may be a party. This Agreement is not intended to alter any of the Parties' rights or obligations under those existing agreements.

Section 3.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Agreement by signing below:

AGENCY:

SUNNYVALE  
REDEVELOPMENT AGENCY, a  
public body, corporate and politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency Special Counsel

DEVELOPER:

FOURTH QUARTER  
PROPERTIES XLVIII, LLC.

By: FORUM DEVELOPMENT  
GROUP, LLC.

Its: Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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EXHIBIT A  
(Map Showing Site)